

MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

DOCUMENT IDENTIFIER:

MIOSHA-STD-08-2R3

DATE:

July 6, 2021

SUBJECT: Post-Emergency Response Operations - Inspection Guidelines

- I. Purpose. This instruction provides procedures for ensuring uniform MIOSHA enforcement of post-emergency response training requirements specified in MIOSHA General Industry and Construction Safety and Health Standard Part 432. [Hazardous Waste Operations and Emergency Response](#).
- II. Scope. This instruction applies to General Industry Safety and Health Division (GISHD) and Construction Safety and Health Division (CSHD) enforcement operations.
- III. References.
 - A. General Industry and Construction Safety and Health Standard Part 432. /R325.52101 et seq., [Hazardous Waste Operations and Emergency Response](#).
 - B. General Industry Safety and Health Standard Part 6. /R408.10601 et seq., [Fire Exits](#).
 - C. General Industry Safety Standards Part 92. /R408.19201 et seq., [Hazard Communication](#).
 - D. [Michigan Occupational Safety and Health Act](#), R408.1001 et seq., P.A. 154 of 1974, as amended.
 - E. [MIOSHA Field Operations Manual \(FOM\)](#), as amended.
 - F. Occupational Health Standards Part 430. /R325.77001 et seq., [Hazard Communication](#).
 - G. General Industry and Construction Safety and Health Standard, Part 451. /R325.60051 et seq., [Respiratory Protection](#).
 - H. Occupational Safety and Health Administration (OSHA) Instruction [CPL 02-02-051](#), November 5, 1990, Inspection Guidelines for Post-Emergency Response Operations under 29 CFR 1910.120.
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations. All previous versions of this agency instruction.
- VI. Next Review Date. This instruction will be reviewed in three (3) years from date of issuance.
- VII. History. History of previous versions includes:

MIOSHA-STD-08-2R2, December 14, 2016
MIOSHA-STD-08-2R1, February 24, 2012
MIOSHA-STD-08-2, August 26, 2008

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- X. Background. A final standard for General Industry and Construction Safety and Health Standard Part 432. [Hazardous Waste Operations and Emergency Response](#) (HAZWOPER R 325.52101 et seq.) became effective October 31, 1991, and was amended December 12, 2018. This standard regulates worker safety and health during post-emergency response operations, in addition to many other requirements. In 1995, federal OSHA established a guideline ([CPL 02-02-051](#), November 5, 1990, Inspection Guidelines for Post-Emergency Response Operations Under 29 CFR 1910.120) that is comparable to this instruction.
- A. The standard defines post-emergency response as: "...that portion of an emergency response is performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site, has begun. If post-emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post-emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to . . ." provisions in General Industry and Construction Safety and Health Standard [Part 432](#). (29 CFR 1910.120(q)(11)).
- B. The employer conducting the clean-up must comply with all the requirements in sections 1910.120(b) - 1910.120(o) of General Industry and Construction Safety and Health Standard Part 432. Hazardous Waste Operations and Emergency Response (HAZWOPER R 325.52101 et seq.) unless the clean-up is done on plant property using plant or workplace employees. The requirements under sections 1910.120(b) - 1910.120(o) of the standard specify a minimum of 24 hours of off-site training. However, if the clean-up is done on plant property using plant or workplace employees, the employer may instead comply with the training requirements of Part 451. [Respiratory Protection](#); 29 CFR 1910.38; Part 6. [Fire Exits](#), Rule 623; [Part 92](#) and [Part 430](#). Hazard Communication 1910.1200 (h); and [MIOSH Act](#) 1974 as amended, Sections 14a - 14m, and any other appropriate training made necessary by the tasks they are expected to perform [General Industry and Construction Safety and Health Standard Part 432. (29 CFR 1910.120(q)(11)(ii))].
- C. Based on OSHA's experience in applying the federal HAZWOPER rules during oil spills off the coasts of Texas, Alaska, and California, the hazards to employees vary widely in severity of potential injury or illness. For job duties and responsibilities with a low magnitude of risk, fewer than 24 hours of training may be appropriate for these post-emergency clean-up workers. The United States Coast Guard and other concerned parties have requested flexibility in the amount of employee training required for petroleum spill clean-ups and other types of

clean-up operations which follow emergency situations. Therefore, it is MIOSHA's expectation that though the number of hours of training may vary, a minimum of four (4) hours would be appropriate in most situations. Moreover, petroleum spills are unique in that many people who assist in the clean-up operations may not engage in this activity on a recurring basis. In addition, for maximum protection of the environment, petroleum spills dictate clean-up must be completed as soon as possible.

XI. Enforcement Guidelines.

- A. Policy Background. If an employer complies with the clear intent of a standard but deviates from the particular requirements in a manner that has no direct or immediate relationship to employee safety or health, [MIOSHA's FOM](#) directs that such a violation be characterized as de minimis. Citations are not issued for de minimis violations. The [FOM](#), Chapter VI. II. B. 8. states: A violation worksheet will not be completed for de minimis violations, except for those violations directly related to a complaint item. For those de minimis violations, a "De Minimis Notice of Violation" will be issued to the employer.
- B. Policy. Compliance with the intent of the training requirements in General Industry and Construction Safety and Health Standard [Part 432](#). (29 CFR 1910.120(q) (11) (i)) is achieved when an employer provides sufficient training as outlined in paragraph XI. C. below, but the exact specifications of OSHA standards are not met (e.g., the specific number of hours required by the standard is not given). In such cases a de minimis violation exists and no citation will be issued. Violations of General Industry and Construction Safety and Health Standard Part 432. (29 CFR 1910.120(q) (11) (i)) can be abated by compliance with the criteria specified in X. C. of this instruction.
- C. De Minimis Criteria. All of the following criteria must be met in order to classify violations of the training requirements in General Industry and Construction Safety and Health Standard Part 432. (29 CFR 1910.120(q) (11) (i)) as de minimis:
 1. Clean-up is performed in an area that has been monitored and fully characterized by a qualified person indicating that exposures are presently, and can be expected to remain, below established permissible exposure limits and other published exposure limits.
 2. Health risks from skin absorption are minimal.
 3. Employees have completed the training requirements of Part 451. [Respiratory Protection](#); 29 CFR 1910.38(a); General Industry Part 6. [Fire Exits](#). R 623; R 408.41801 et seq.; and [Parts 92](#) and [430](#). Hazard Communication Rule 1910.1200(h); P.A. 154 of 1974, Sections 14a – 14m and any other appropriate safety and health training including, but not limited to operating procedures, decontamination procedures, water safety, hypothermia, heat stress, and safety hazard controls as necessary for the tasks they are expected to perform.

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4. There is adequate on-site supervision by an individual who meets the training requirements in General Industry and Construction Safety and Health Standard [Part 432](#). (29 CFR 1910.120(e)(4)).
5. All equipment that is used in the clean-up of the site is in operable condition and is inspected before use.